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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/658,147

09/08/2003

Michael Rose

BETT-00100

5395

7590

02/10/2005

David R. Stevens  
Stevens Law Group  
P.O. Box 1667  
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EXAMINER

VU, DAVID HUNG

ART UNIT

PAPER NUMBER

2828

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/658,147

Applicant(s)

ROSE, MICHAEL

Examiner

David Vu

Art Unit

2828

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-10 is/are rejected.
- 7) ☒ Claim(s) 2-4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Oath/Declaration***

1. The preliminary amendment filed on 09/08/2003 referenced a claim for foreign priority based on an application filed in Germany on 04/23/2003. Applicant has not complied with the requirements of 37 CFR 1.63(c), since even though the oath, declaration does acknowledge the filing of a foreign application, the priority is not being claimed. A new oath, declaration or application data sheet is required in the body of which the present application should be identified by application number and filing date.

### ***Priority***

2. The preliminary amendment filed on 09/08/2003 referenced a claim for foreign priority based on an application filed in Germany on 04/23/2003. It is noted, however, that applicant has not filed a certified copy of the German application as required by 35 U.S.C. 119(b).

### ***Specification***

3. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
4. The disclosure is objected to because of the following informalities: abstract, "Fig 1" at the bottom page should be deleted.

Appropriate correction is required.

***Drawings***

5. The drawings are objected to because block diagrams in figures 1 and 4-6 should be labeled. For example in figure 1, "110" should be ---MEMORY---. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the brightness sensor (claim 9) and selector unit (claim 8) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 5-8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Chliwnyj et al (hereinafter Chliwnyj), U.S. Pat No 5,294,784.

Chliwnyj discloses a control apparatus for controlling one or more lamps LEDs or illuminating devices such as to achieve a natural flickering effect, whereas the control apparatus comprises a microprocessor circuit 1 which is adapted to output an output signal for controlling or driving the one or more lamps, whereas to make a flame constantly changing the microprocessor and random number generator change the controlling signal frequency to make it not periodic, see, for example, abstract, column 2, lines 26+, column 3, lines 14-31, columns 7-8, figures 1-2, 11-12. Column 3, lines 13-30 and column 9, lines 20-52, also disclose the use of PWM to turn the lights LED on and off (at a frequency that is far above the ability of the human eye to resolve).

Regarding claims 5 and 8, columns 7-8, column 9, lines 20-51, and column 10, lines 19-30, disclose the microprocessor in conjunction with the random number generator 25 and PWM for selecting the frequency of occurrence within a period of time for which the LEDs are switched on and off. The random numbers generated thus are used for defining the time periods for which the LEDs to be controlled are switched on or off.

Regarding claim 6, figure 1 shows output terminals from LED drivers controlling a plurality of illumination means 7a-7e.

Regarding claim 7, in order to have the flame constantly changing the microprocessor inherently runs a plurality of loops for controlling a plurality of illumination means independently from each other.

Regarding claim 10, figure 4 shows an electronic grave light.

Note that the term "adapted to" throughout the claims is not given much patentable weight since the term is not a positive recitation and should be deleted.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chliwnyj et al in view of Jullien, U.S. Pat No 4,492,896.

Chliwnyj et al as discussed from the above, essentially disclose the claimed invention but fail to explicitly disclose a switch for switching the control apparatus on and off. Jullien discloses switch 11 connected to a control apparatus (figure 3). It would have been obvious to one having ordinary skill in the art at the time of applicant's claimed invention was made to have provided the Chliwnyj et al reference with switch

11 as taught by Jullien; thus, the apparatus would have been turned on and off accordingly.

### ***Allowable Subject Matter***

11. Claims 2-4 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Vu whose telephone number is (571) 272-1831. The examiner can normally be reached on M-F 8am-430pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Vu

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Primary Examiner  
Art Unit 2828

dv